

United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA
CRIMINAL DIVISION

VENUE: SAN FRANCISCO

UNITED STATES OF AMERICA

v.

DHIREN PATEL

CR 10 0724

WHA

DEFENDANT.

INDICTMENT

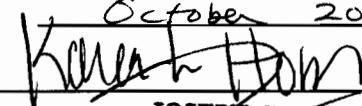
18 U.S.C. § 371- Conspiracy
18 U.S.C. § 2- Aiding and Abetting
33 U.S.C. § 1319(c)(2)(B) & (c)(4)- Clean Water Act

A true bill.


Foreman

Filed in open court this 5th day of

October 2010


KAREN L. HC.M.
Clerk
JOSEPH C. SPERO
UNITED STATES MAGISTRATE JUDGE

Bail, \$

no bail arrest warrant

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ INFORMATION ☒ INDICTMENTMatter Sealed: ☐ Juvenile ☐ Other than Juvenile
☐ Pre-Indictment Plea ☐ Superseding ☐ Defendant Added
☐ Indictment ☐ Charges/Counts Added
☐ Information

Name of District Court, and/or Judge/Magistrate Location (City)

 UNITED STATES DISTRICT COURT San Francisco
 DISTRICT OF Northern California Divisional Office

 Name and Office of Person
 Furnishing Information on
 THIS FORM MELINDA HAAG
☐ U.S. Atty ☐ Other U.S. Agency
 Phone No. _____

 Name of Asst.
 U.S. Attorney Stacey P. Geis
 (if assigned)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

U.S. Environmental Protection Agency
☐ person is awaiting trial in another Federal or State Court
 (give name of court) _____

☐ this person/proceeding transferred from another district
 per (circle one) FRCrP 20, 21 or 40. Show District _____

☐ this is a reprosecution of charges
 previously dismissed which were
 dismissed on motion of:

☐ U.S. Atty ☐ Defense

☐ this prosecution relates to a
 pending case involving this same
 defendant. (Notice of Related
 Case must still be filed with the
 Clerk.)

☐ prior proceedings or appearance(s)
 before U.S. Magistrate Judge
 regarding this defendant were
 recorded under
SHOW
DOCKET NO.MAG. JUDGE
CASE NO.
 Place of
 offense _____ County _____

CASE NO.

USA vs.

Defendant: Dhiren Patel

Address:

☐ Interpreter Required Dialect: _____
 Birth Date _____ ☐ Male ☐ Alien
☐ Female (if applicable)

Social Security Number _____

DEFENDANT

Issue: ☒ Warrant ☐ Summons

Location Status:

Arrest Date _____ or Date Transferred to Federal Custody _____

☐ Currently in Federal Custody☐ Currently in State Custody☐ Writ Required☐ Currently on bond☐ Fugitive

Defense Counsel (if any): _____

☐ FPD ☐ CJA ☐ RET'D☐ Appointed on Target Letter☐ This report amends AO 257 previously submitted

OFFENSE CHARGED - U.S.C. CITATION - STATUTORY MAXIMUM PENALTIES - ADDITIONAL INFORMATION OR COMMENTS

Total # of Counts 3

Set	Title & Section/Offense Level (Petty = 1 / Misdemeanor = 3 / Felony = 4)	Description of Offense Charged	Count(s)
	33 U.S.C. § 1319(c)(2)(B) & (c)(4)	Clean Water Act	5
	18 U.S.C. § 371	Conspiracy	1
	18 U.S.C. § 2	Aiding & Abetting	5
	\$ 250,000 fine; 5yrs(371)/2yrs(1319)		
	Imprisonment; \$100/count Special Assesment		

MELINDA HAAG (CABN 132612)
United States Attorney

FILED
2010 OCT -5 P 4:22
RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[REDACTED]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WHA

UNITED STATES OF AMERICA,
Plaintiff,

v.

DHIREN PATEL,
Defendant.

CR 10 0724

VIOLATIONS: 18 U.S.C. § 371 -
Conspiracy; 33 U.S.C. §§ 1319(c)(2)(B) &
(c)(4) -- Clean Water Act; 18 U.S.C. § 2 -
Aiding and Abetting

SAN FRANCISCO VENUE

INDICTMENT

The Grand Jury charges:

At all times relevant to this Indictment:

Introductory Allegations

1. AMCAN Beverages Inc., a wholly owned subsidiary of The Coca-Cola Company and a part of Coca-Cola North America, a wholly owned business unit of The Coca-Cola Company ("AMCAN"), was a bottling company located in American Canyon, California, in the Northern District of California, that produced beverage products including juices, juice drinks, energy drinks, and teas. In 2007, the plant produced approximately 18 million bottles and cans of various beverage products.

INDICTMENT

[Handwritten signature]

2. DHIREN PATEL was the Environmental Affairs, Safety, and Security Manager of AMCAN from approximately July 2004 until August 2007. PATEL was responsible for the operation and supervision of AMCAN's wastewater treatment plant ("WWTP") located on site next to the bottling production plant.

The Clean Water Act

3. The Federal Water Pollution Control Act, Title 33, United States Code, Section 1251, *et seq.*, more commonly known as the Clean Water Act ("CWA"), was enacted by Congress to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). Congress intended that the CWA would prevent, reduce, and eliminate water pollution in the United States, and conserve the waters of the United States for the protection and propagation of fish and aquatic life and wildlife, and for recreational purposes. 33 U.S.C. § 1252(a).

4. The CWA prohibits the owner or operator of any source of pollutants from introducing such pollutants into a municipal sewage system in violation of pretreatment standards under the CWA. 33 U.S.C. § 1317(d). "Pollutant" means, among other things, chemical and industrial waste. 33 U.S.C. § 1362(6). "Owner or operator" is defined as "any person who owns, leases, operates, controls, or supervises a source." 33 U.S.C. § 1316(4). "Person" is defined as any "individual, corporation, partnership, [or] association." 33 U.S.C. § 1362(5).

5. Pursuant to the authority found at 33 U.S.C. §§ 1317 (b) and (c), the Environmental Protection Agency ("EPA") has promulgated "National Pretreatment Standards" for industrial sources of wastewater, that discharge to publicly owned treatment works ("POTW"), which can be found at 40 C.F.R. §§ 403-471. A POTW is a public facility such as a sewage treatment plant that treats municipal sewage or industrial wastes. 33 U.S.C. § 1292(2). The City of American Canyon's Wastewater Treatment Facility is a POTW.

6. Industrial waste dischargers, such as bottling production facilities, are required to pretreat their wastewater before it is discharged to a POTW in order to comply with the National

1 Pretreatment Standards. 33 U.S.C. § 1317; 40 C.F.R. § 403. "Pretreatment" means the reduction
 2 of the amount of pollutants, the elimination of certain pollutants, or the alteration of the nature of
 3 pollutant properties in wastewater before or instead of discharging or otherwise introducing such
 4 pollutants into a POTW. Generally, industrial waste dischargers are prohibited from discharging
 5 wastewater with the following characteristics:

- 6 (a) pollutants that will create a fire or explosion hazard;
- 7 (b) pollutants that will cause corrosive structural damage, but in no case
- 8 discharges with a pH lower than 5.0;
- 9 (c) solid or viscous pollutants in amounts that will cause obstruction to flow;
- 10 (d) oxygen-demanding pollutants discharged at a concentration or volume that
- 11 will cause interference with the POTW's operations;
- 12 (e) heat in amounts that will inhibit biological activity;
- 13 (f) oil products in amounts that cause interference or pass through;
- 14 (g) pollutants that may cause a public nuisance or worker health and safety
- 15 problems; and
- 16 (h) trucked or hauled pollutants.

17 40 C.F.R. § 403.5(b).

18 7. EPA may also enforce local limits or prohibitions developed by a POTW. 40
 19 C.F.R. § 403.5(c)-(d).

20 The City CWA Permit

21 8. The City of American Canyon had its own POTW, which processed both
 22 domestic sewage and industrial waste. After processing at the POTW, the water ultimately
 23 discharged as effluent into the Napa River, which flows into San Francisco Bay.

24 9. In 2004, the California Regional Water Quality Control Board, San Francisco Bay
 25 Region, pursuant to its federally authorized CWA program, issued to the City of American
 26 Canyon a National Pollutant Discharge Elimination System Permit ("City Permit"), regulating
 27 operations at, and discharges of domestic sewage and industrial waste from, its POTW. Under
 28

1 the City Permit, the POTW had both general and specific prohibitions regarding the effluent that
2 would leave the POTW. Violation of either general or specific prohibitions could result in an
3 enforcement action against the City.

4 The AMCAN CWA Permit

5 10. During the relevant time period, AMCAN's production of beverage products
6 would generate up to 150,000 gallons per day of wastewater that would be processed on site by
7 AMCAN's WWTP.

8 11. To maintain compliance with its own City Permit, the City POTW issued a
9 Wastewater Discharge Permit to AMCAN for its WWTP ("AMCAN Permit"). As part of the
10 permit, AMCAN had to comply with the general prohibitions set forth in paragraph 6 above.
11 AMCAN also had specific, numeric wastewater discharge limitations. In particular, AMCAN
12 was prohibited, among other things, from discharging Biological Oxygen Demand ("BOD") in
13 excess of 200 mg/l, Total Suspended Solids ("TSS") in excess of 220 mg/l, and zinc in excess of
14 3.20 mg/l.

15 12. The AMCAN Permit also required AMCAN to monitor and report on its effluent
16 leaving the facility and entering the City's sewer system to ensure compliance with its discharge
17 limitations. In particular, AMCAN had a sampling schedule it had to follow. The schedule
18 required weekly, monthly, and quarterly samples of the effluent. AMCAN had to submit both
19 monthly and quarterly reports to the City documenting its compliance or non-compliance with its
20 permit conditions. If sampling analysis showed a violation of the permit had occurred, AMCAN
21 had to notify the City within 24 hours of the violation and repeat the sampling analysis for five
22 consecutive days with the results being sent in writing to the City.

23 13. During the relevant time period, PATEL had authority, control, and supervision
24 over day-to-day operations of AMCAN's WWTP. As manager of the WWTP, PATEL was
25 required to collect samples, submit the samples to an off-site lab for analysis, and report the test
26 results in a monthly report that was provided to AMCAN's general manager. AMCAN's general
27 manager, relying on the data PATEL submitted, would sign and submit the report to the City on a
28

1 monthly basis.

2 The Conspiracy

3 COUNT ONE: (18 U.S.C. § 371 – Conspiracy)

4 14. Paragraphs 1 through 13 of this Indictment are hereby re-alleged and incorporated
5 by reference as if set forth in full herein.

6 15. Beginning at a time unknown to the Grand Jury, but no later than January 2006,
7 and continuing until on or about August 17, 2007, in the Northern District of California and
8 elsewhere, the defendant,

9 DHIREN PATEL,

10 and others known and unknown to the Grand Jury, did knowingly and willfully conspire to
11 commit offenses against the United States, namely, to violate the Clean Water Act by (1)
12 knowingly introducing pollutants into a sewer system or POTW that could cause such POTW to
13 violate an effluent limitation or permit condition, in violation of Title 33, United States Code,
14 Section 1319(c)(2)(B); (2) knowingly making false statements in required reports, in violation of
15 Title 33, United States Code, Section 1319(c)(4), and (3) knowingly falsifying, tampering with,
16 and rendering inaccurate a monitoring device, in violation of Title 33, United States Code,
17 Section 1319(c)(4).

18 Manner and Means

19 16. It was part of the conspiracy that PATEL ordered AMCAN employees and
20 contractors working for AMCAN, including other members of the conspiracy, to dilute samples
21 taken from the WWTP's effluent before they were submitted to an outside laboratory for testing.

22 17. It was further part of the conspiracy that members of the conspiracy diluted
23 samples so that the samples would not exceed the discharge limitations for zinc, BOD, or TSS.

24 18. It was further part of the conspiracy that at times, before diluting the sample, a
25 member of the conspiracy first tested the sample on-site and reported the reading to PATEL. If
26 the reading exceeded a specific discharge limitation, PATEL ordered the other member of the
27 conspiracy to dilute the sample by adding up to fifty percent diluted water or tap water to the
28

1 sample.

2 19. It was further part of the conspiracy that PATEL himself diluted samples before
3 sending the sample to an off-site lab for testing and analysis.

4 20. It was further part of the conspiracy that PATEL, in addition to ordering other
5 members of the conspiracy to dilute samples, ordered other members of the conspiracy to skim
6 the top of the 24-hour composite sample instead of shaking the composite sample before
7 collection as required to obtain a representative sample that included all constituents, including
8 solids.

9 21. It was further part of the conspiracy that PATEL prepared monthly reports that
10 contained the analytical results of the diluted samples. These false monthly reports were
11 submitted, as required under the AMCAN Permit, to the City to demonstrate compliance with the
12 conditions of the AMCAN Permit.

13 22. It was further part of the conspiracy that PATEL used his position as a manager to
14 ensure the continued dilution of samples as well as the submission of false monthly reports to the
15 City that concealed violations of the AMCAN permit.

16 Overt Acts

17 23. In furtherance of the conspiracy and to carry out its objects, defendant PATEL,
18 together with others known and unknown to the Grand Jury, committed and caused to be
19 committed the following overt acts, among others, in the Northern District of California and
20 elsewhere:

21 (a) On or about May 31, 2007, a member of the conspiracy diluted a BOD sample
22 before sending it to an off-site lab for analysis.

23 (b) In or about June 2007, PATEL prepared and caused the submission of a monthly
24 wastewater discharge report for May 2007, as required by AMCAN's permit. The
25 May monthly report was submitted to the City on or about June 21, 2007, and
26 contained the BOD analysis for May 31, 2007, which falsely showed AMCAN
27 was in compliance with its BOD limits. Specifically, the report falsely stated that
28

1 the BOD level for May 31, 2007, was 190 mg/l, when City surveillance showed
2 that the BOD level for effluent leaving AMCAN on May 31, 2007, was 1,643
3 mg/l.

- 4 (c) During the week of June 17, 2007, a member of the conspiracy discharged a
5 pollutant, namely, BOD, into a sewer system. The discharge caused the City
6 POTW to exceed its permit limitations for BOD.
- 7 (d) On or about June 29, 2007, a member of the conspiracy diluted a BOD and TSS
8 sample before sending them to an off-site lab for analysis.
- 9 (e) In or about July 2007, PATEL prepared and caused the submission of a monthly
10 wastewater discharge report for June 2007, as required by AMCAN's permit. The
11 June monthly report was submitted to the City on or about July 27, 2007, and
12 contained the BOD and TSS analysis for June 29, 2007, which falsely showed
13 AMCAN was in compliance with its BOD and TSS limits. Specifically, the June
14 2007 report stated that the BOD level for June 29, 2007, was 51 mg/l and the TSS
15 level was 160 mg/l, when City surveillance showed that the BOD level for
16 effluent leaving AMCAN on June 29, 2007, was 1,400 mg/l and the TSS level
17 was 1,800 mg/l.
- 18 (f) On or about July 20, 2007, a member of the conspiracy diluted a TSS sample
19 before sending it to an off-site lab for analysis.
- 20 (g) In or about late July 2007, PATEL prepared and caused the submission of a
21 monthly wastewater discharge report for July 2007, as required by AMCAN's
22 permit. The July monthly report was submitted to the City on or about August 23,
23 2007, and falsely showed AMCAN was in compliance with its TSS limits.
24 Specifically, the July 2007 report stated that the TSS level for July 20, 2007, was
25 120 mg/l, when City surveillance showed that the TSS level for effluent leaving
26 AMCAN on July 20, 2007, was 1,600 mg/l.

27 All in violation of Title 18, United States Code, Section 371.
28

1 COUNT TWO: (33 U.S.C. § 1319(c)(4) – Clean Water Act)

2 24. The allegations set forth in paragraphs 1-13 above are realleged and incorporated
3 herein by reference.

4 25. On or about May 31, 2007, in the Northern District of California, the defendant,
5
6 DHIREN PATEL,
7 knowingly falsified, tampered with, and rendered inaccurate, and caused to be falsified, tampered
8 with, and rendered inaccurate, a monitoring device and method that was required to be
9 maintained under the Clean Water Act, namely, by diluting a BOD sample, all in violation of
10 Title 33, United States Code, Section 1319(c)(4) and Title 18, United States Code, Section 2.

11 COUNT THREE: (33 U.S.C. § 1319(c)(4) – Clean Water Act)

12 26. The allegations set forth in paragraphs 1-13 above are realleged and incorporated
13 herein by reference.

14 27. On or about June 21, 2007, in the Northern District of California, the defendant,
15
16 DHIREN PATEL,
17 knowingly made and caused to be made a false material statement, representation, and
18 certification in any application, report, record, plan and other document that was required to be
19 filed and maintained under the Clean Water Act, namely, a monthly wastewater discharge report
20 that falsely stated BOD results for May 31, 2007, all in violation of Title 33, United States Code,
21 Section 1319(c)(4) and Title 18, United States Code, Section 2.

22 COUNT FOUR: (33 U.S.C. § 1319(c)(4) – Clean Water Act)

23 28. The allegations set forth in paragraphs 1-13 above are realleged and incorporated
24 herein by reference.

25 29. On or about June 29, 2007, in the Northern District of California, the defendant,
26
27 DHIREN PATEL,
28 knowingly falsified, tampered with, and rendered inaccurate and caused to be falsified, tampered
with, and rendered inaccurate, a monitoring device and method that was required to be
maintained under the Clean Water Act, namely, by diluting a BOD and TSS sample, all in

1 violation of Title 33, United States Code, Section 1319(c)(4) and Title 18, United States Code,
2 Section 2.

3 COUNT FIVE: (33 U.S.C. § 1319(c)(4) – Clean Water Act)

4 30. The allegations set forth in paragraphs 1-13 above are realleged and incorporated
5 herein by reference.

6 31. On or about July 27, 2007, in the Northern District of California, the defendant,
7
8 DHIREN PATEL,
9 knowingly made and caused to be made a false material statement, representation, and
10 certification in any application, report, record, plan and other document that was required to be
11 filed and maintained under the Clean Water Act, namely, a monthly wastewater discharge report
12 that falsely stated BOD and TSS results for June 29, 2007, all in violation of Title 33, United
13 States Code, Section 1319(c)(4) and Title 18, United States Code, Section 2.

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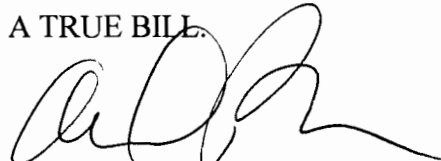
COUNT SIX: (33 U.S.C. § 1319(c)(2)(B) – Clean Water Act)

32. The allegations set forth in paragraphs 1-13 above are realleged and incorporated herein by reference.

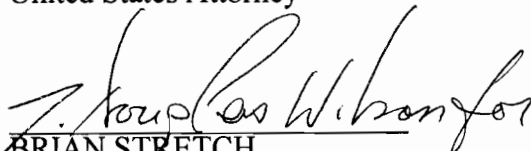
33. On or about June 19, 2007, in the Northern District of California, the defendant,
 DHIREN PATEL,
 knowingly introduced and caused to be introduced into a sewer system and publicly owned treatment works a pollutant, namely, BOD in excess of AMCAN's permit limitations, which defendant knew and reasonably should have known could cause such treatment works to violate any effluent limitation and condition in the permit issued to the treatment works under Section 1342 of this title by the Administrator or State, all in violation of Title 33, United States Code, Section 1319(c)(2)(B) and Title 18, United States Code, Section 2.


DATED: October 5th, 2010

A TRUE BILL.


 FOREPERSON

MELINDA HAAG
 United States Attorney


 BRIAN STRETCH
 Chief, Criminal Division

(Approved as to form: 
 AUSA GEIS